

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 02ND DAY OF APRIL 1998

BEFORE:

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

H.R.R.P. NUMBER 364/1998

Between:

Chandrashekhar,

Age: 64 years,

s/o Rudrappa Bagi,

Businessman, Kirana Bazar,

BIJAPUR.

... Petitioner

(By Sri.Datar Sr.Adv. for Sri K.S.Desai & Harsh Desai)

And:

1) Dongarchand, major  
s/o Hanjarimal Jain, Businessman,  
R/o Kirana Bazaar, Bijapur,  
by his Power of Attorney Holder  
Lalchand Hanjarimal Jain.

2) Vishwanath, major,  
S/o Rudrappa Bagi,  
Kirana Bazaar, Bijapur.

3) Irappa, major,  
S/o Rudrappa Bagi,  
KirananaBazaar,  
Bijapur.

4) Basappa,  
major, S/o Rudrappa Bagi,  
Kirana Bazaar,  
BIJAPUR.

... Respondents

(By Sri B.L.Acharya for S.B.Hobballi for R-1.)

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This H.R.R.P. filed u/s 115 of CPC against the order dated 26.2.98 passed in Ex.No.8/98 on the file of the Addl. Civil Judge (Jr.Dn.,) and JMFC-II, Bijapur.

This H.R.R.P: is coming on for admission this day, the Court made the following:

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ORDER....

O R D E R

The Judgment Debtor aggrieved by the order of the Executing Court ordering "issuing of delivery warrant", has filed this revision petition.

2. The contention of the Judgment Debtor is that the order or decree passed in the eviction petition filed by the decree holder is not maintainable.

3. Briefly stated the facts are as follows:

The decree holder one Dongarchand Hanjarimal Jain had filed an eviction petition against the present petitioner/judgment debtor and another in respect of the premises bearing CTS Nos.790 & 791 situated at Bijapur on the ground that he required the premises for his own use and occupation. This petition was rejected by the learned Munsiff. Aggrieved by the same, the decree holder/respondent no.1 herein preferred a Rent Revision before the learned Dist. Judge. Learned Dist. Judge also had dismissed his Revision Petition against which a further revision was preferred to this Court

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in HRRP Nos.4198 & 4199/90. This Court reversed the orders of the learned Dist.Judge and the Munsiff and ordered eviction. Aggrieved by the same, petitioner/judgment debtor herein had filed a Special Leave Petition before the Hon'ble Supreme Court in Nos.10962 & 10963/97 which was dismissed on merits. At the time when the Special Leave Petitions were dismissed present petitioner prayed for time, to vacate, which was granted till the end of June '98 subject to the condition that he should file an undertaking within 4 weeks in default. Eviction order passed would become immediately executable.

Since the petitioner herein did not file the undertaking as per the directions of Supreme Court, respondent no.1/decree holder sued out execution. Petitioner herein entered appearance and resisted the execution on the ground that the eviction order was not executable; as according to him the eviction order obtained by Decree holder pertained to a part of premises C.T.S. Nos.790 & 791, but the latter is executing in respect of the other part of premises which did not belong to him. The Executing Court

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over-ruled the said objections and ordered issuance of 'delivery warrant' in execution of the order.

4. Aggrieved by the same, this revision petition is filed.

5. The only contention made by the learned senior counsel appearing for the petitioner Sri H B Datar is that the 'decree holder Respondent no.1' is not the exclusive owner of the entire premises No.790 & 791 with reference to which he has sought to execute the order. His ownership extended only to the part of the premises, but he is seeking to execute in respect of the entire premises No. 790 & 791. Elaborating his submissions, he contended that the premises bearing CTS 790 & 791 which consists of 3 shops in the front and 3 rooms in the hind portion was jointly purchased by respdt.1 alongwith one Abhay Kumar Shah. Subsequently at a suit for partition <sup>between</sup> ~~the~~ <sup>the</sup> ~~latter~~ and respondent no.1 herein a compromise decree was passed under which the first respondent's share has been demarcated as a entire room and a shop on the eastern side and half the portion

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of the room and a shop in the middle. No further steps having been taken to physically divide the shop by raising any dividing wall in the absence of which the eviction order cannot be executed only in respect of his portion only; In answer to this it was submitted by the learned <sup>senior</sup> counsel for respondent <sup>S. B. V. Acharya</sup> the point raised by the petitioner is already concluded against him in the earlier proceedings.

6. He took me through the relevant portions of the eviction order passed by this Court. The grounds of Special Leave Petition filed before the Supreme Court, the objections, rejoinders and the order of the Supreme Court.

7. In order to appreciate the revial contentions the relevant portions of the findings of the learned Dist. Judge and this Court and also the pleadings before the Supreme Court and order is extracted herein and referred to;

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One of the ground under which the learned District Judge rejected the eviction petition of respondent No.1 is as:

"In the absence of any division in the middle portion, the petitioner cannot claim the title and ~~the~~ statute of the landlord so far as that portion is concerned."

observed

This Court has/in the course of its order, while <sup>re-setting</sup> the above finding as under:

"Even though the revisional court has upheld the finding given by the trial court about the petitioner having become the owner of the petition schedule premises, has got itself confused in observing that ~~the~~ in so far as one room situated on the eastern side of the property is concerned, petitioner can be held to be the landlord and so far as the other room in occupation of respondent No.1 is concerned, he cannot be held to be the landlord of the entire shop, since half portion of that shop was owned by PW.3 in view of his sale deed. The revisional court has not taken into consideration the fact that the landlord as well as the other co-owner PW.5 have deposed before the court and have accepted the ownership and landlordship of the petitioner in respect of the petition schedule premises."

Thus it is clear that the finding of the learned District Judge that respondent-1 is the owner of only half the portion of the premises and therefore not entitled for eviction was set-aside by this court.

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and a definite finding has been given that respondent-1 is the owner of the entire petition schedule premises and therefore entitled to seek for eviction. In the Special Leave Petition filed before the Hon'ble Supreme Court,

one of the grounds raised therein is as follows:

"The dividing line in the division in the entire property is not in existence. The first respondent has purchased the undivided portion of the C.T.S.No.790 and 791. The first respondent sought the eviction of eastern half portion which is in possession of respondent No.1 and respondent No.2. The first respondent is a tenant of Abhay Kumar in occupation of the western shop and the room. It is significant to note that in so far as the middle shop and the room are concerned it is owned by the first respondent as well as Abhay Kumar jointly having half share in each. That being the case in so far as half portion owner by Abhay Kumar the respondent again claimed the ownership of the said half portion".

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A rejoinder was filed to this. It has also to be stated that the Compromise Decree referred to by the learned counsel Sri H.B.Datar was also assailed before the Supreme Court as a "Sham transaction". However the S.L.P. was dismissed on merits. Therefore it has to be held that the point that has been canvassed before this court has already been concluded against the petitioner; Besides it is not open for the Executing Court to go behind the decree unless the decree becomes unexecutable on account of it being a nullity or being passed by a court without jurisdiction. That is not the case made out by the petitioner herein.

For the reasons stated above, there is no merit in this petition, petition is liable to be rejected and is accordingly rejected.

Learned counsel appearing for the tenant submitted that status-quo may be ordered to be maintained for a period of 2 weeks to approach the Supreme Court.

Accordingly the order of the Executing Court shall be stayed for a period of two weeks from today.

Petition rejected.

Sd/-  
JUDGE

brn/TS